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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Request for Limited Waiver of Washington RSA No. 8 Limited Partnership	)	

ORDER

Adopted: February 8, 2007 **Released: February 8, 2007**

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Washington RSA No. 8 Limited Partnership (Washington RSA 8),[1] a Tier III wireless service provider.[2] Washington RSA 8 seeks a one-year extension of time from its current October 31, 2006 deadline to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's rules that carriers employing a handset-based E911 Phase II location technology were to have achieved 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.[3]

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines, the Commission has afforded relief only when the requesting carrier has met the Commission's standard for waiver of the Commission's rules.[4] Where

[1] *See* Request for Limited Waiver of Washington RSA No. 8 Limited Partnership, CC Docket No. 94-102 (filed Oct. 31, 2006) (Request). In support of its Request, Washington RSA 8 submitted certain information under a request for confidential treatment pursuant to Section 0.459 of the Commission's rules. Because this *Order* discusses only that information already made public by Washington RSA 8, we need not rule on Washington RSA 8's request at this time. Until we so rule, we will honor Washington RSA 8's request for confidential treatment. *See* 47 C.F.R. § 0.459(d)(1).

[2] Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

[3] 47 C.F.R. § 20.18(g)(1)(v). The Commission previously granted Washington RSA 8 relief from the 95% handset penetration deadline until October 31, 2006. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 21 FCC Rcd 2833, 2841 ¶ 30 (2006) (*Washington RSA 8 Waiver Order*).

[4] *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-10 ¶ 1 (2005) (*Tier III Carriers Order*).

carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.[5] We are also mindful of Congress' directive in the ENHANCE 911 Act to grant waivers for Tier III carriers of the 95% penetration benchmark if "strict enforcement . . . would result in consumers having decreased access to emergency services."[6]

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that some relief from the 95% penetration requirement is warranted subject to certain conditions described below. We therefore grant Washington RSA 8 an extension until August 8, 2007 to achieve 95% penetration among its subscribers of location-capable handsets.

II. BACKGROUND

A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.[7] Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),[8] or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).[9] The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.[10] However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.[11]

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules, independent of any PSAP request for Phase II service.[12] After ensuring that 100% of all new digital handsets activated are location-capable, licensees were required to achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.[13]

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[5] *See id.*

[6] National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

[7] *See* 47 C.F.R. § 20.18(e).

[8] Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. *See* 47 C.F.R. § 20.3.

[9] Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. *See* 47 C.F.R. § 20.3.

[10] *See* 47 C.F.R. §§ 20.18(f), (g)(2).

[11] *See* 47 C.F.R. § 20.18(j)(1).

[12] *See* 47 C.F.R. § 20.18(g)(1).

[13] *See* 47 C.F.R. § 20.18(g)(1)(v).

B. Waiver Standards

6. The Commission has recognized that smaller carriers may face "extraordinary circumstances" in meeting one or more of the deadlines for Phase II deployment.[14] The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests."[15] To the extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks.[16] When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.[17] A carrier's justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available federal, state, or local funding sources.[18] The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

> expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.[19]

7. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.[20] In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

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[14] *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *see also Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (stating that "wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations"); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) (stating that "under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and . . . relief may therefore be warranted").

[15] Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000).

[16] *See Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

[17] *See id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

[18] *See id.*

[19] *Id.* at 20997 ¶ 28.

[20] *See Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-37 ¶¶ 17, 19, 37, 57, 70.

8. Finally, we note that distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).[21] The ENHANCE 911 Act, *inter alia,* directed the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and to grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."[22]

C. Washington RSA 8's Request for Further Waiver

9. Washington RSA 8 is a Tier III carrier providing cellular service in Washington and Idaho over CDMA and legacy analog networks.[23] In December 2005, Washington RSA 8 requested a ten-month extension of the Commission's December 31, 2005 deadline for compliance with the 95% location-capable handset penetration requirement. The Commission granted Washington RSA 8's requested relief in full, establishing a compliance deadline of October 31, 2006.[24] On October 31, 2006, Washington RSA 8 filed the instant Request, in which it states that "based on current trends[,] it is not possible for Washington RSA 8 to achieve the 95% milestone by October 31, 2006."[25]

10. In its Request, Washington RSA 8 reports a handset penetration rate of 83.2% as of October 1, 2006.[26] Washington RSA 8 describes an average increase in its penetration rate of approximately 1% per month over the course of its ten-month extension.[27] Washington RSA 8 adds that "after a period of significant improvement earlier [in 2006] the rate of penetration . . . has again 'flattened out,' notwithstanding [its] ongoing efforts."[28] Washington RSA 8's penetration rate reached 84.6% as of November 1, 2006, and 87.1% as of February 1, 2007.[29]

11. Washington RSA 8 describes the efforts it has undertaken to meet the 95% handset penetration requirement. These efforts include offering free location-capable handsets with a two-year service contract; offering "up to 500 free additional minutes" to subscribers who upgrade their handsets and sign a two-year service contract; and offering a $35 discount on location-capable handset upgrades with no contract requirement.[30] Washington RSA 8 also describes customer outreach efforts that included

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[21] National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

[22] *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* § 107(b), 118 Stat. 3986, 3991.

[23] *See* Request at 2.

[24] *See Washington RSA 8 Waiver Order*, 21 FCC Rcd at 2841 ¶ 30.

[25] *See* Request at 3.

[26] *Id.* After reporting a handset penetration rate of 92.8% in its initial request for waiver, and following release of the *Washington RSA 8 Waiver Order*, Washington RSA 8 reported that it had calculated its penetration rate incorrectly, and that the penetration rate when it filed its initial request was actually 73%. *See* Washington RSA 8 May 1, 2006 Quarterly Report at 4 n.4. In its first quarterly status report, Washington RSA 8 reported a penetration rate of 73.9% as of May 1, 2006. *See id.* at 4.

[27] *See id.* at 5.

[28] *Id.*

[29] *See* Washington RSA 8 November 1, 2006 Quarterly Report at 4; Washington RSA 8 February 1, 2007 Quarterly Report at 4.

[30] Request at 3.

calling every subscriber who did not yet have a location-capable handset "to offer new upgraded handsets and explain the public safety benefits of having E911 ALI capability."[31] In addition, Washington RSA 8 states that it has undertaken a "significant facilities buildout campaign that will enhance its digital coverage and thus further diminish any subscriber perception that currently, analog coverage exceeds digital coverage."[32]

12. In support of its Request, Washington RSA 8 states that despite its efforts to comply with the handset penetration requirement, "nearly 10 percent of [its] customers remain unwilling to upgrade their analog phones to ALI-capable digital handsets."[33] Washington RSA 8 attributes this to "circumstances unique to its service area,"[34] namely that it has "a substantial number of customers" who use analog bag phones and whose local PSAPs do not provide Phase II service.[35] Washington RSA 8 argues that for this reason, strict enforcement of the Commission's location-capable handset penetration requirement "'would impair the ability of certain 911 callers to reach emergency assistance'" and, therefore, its request for waiver meets the standard for relief under the ENHANCE 911 Act as well as the Commission's E911 waiver standards.[36]

III. DISCUSSION

13. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and would have ensured that Phase II would be fully implemented as quickly as possible.[37] Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.[38] Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress' directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.[39]

14. We are concerned that Washington RSA 8 was unable to accurately forecast location-capable handset penetration among its customers at the time of its original request for relief, fell short in promoting adoption of location-capable handsets, or both.[40] Nonetheless, consistent with the directive of the ENHANCE 911 Act, we find that certain of Washington RSA 8's customers would likely find it more

[31] *Id.*

[32] *Id.* at 4.

[33] *Id.* at 3.

[34] *Id.* at 4.

[35] *Id.* at 6.

[36] *Id.* (citing *Washington RSA 8 Waiver Order*, 21 FCC Rcd at 2839 ¶ 14).

[37] *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

[38] *See Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

[39] *See supra* ¶ 8.

[40] *See supra* note 26.

difficult, and at times impossible, to contact a PSAP in parts of Washington RSA 8's service area if those customers were forced to convert from analog bag phones to location-capable handsets. It thus appears likely that strict enforcement of Washington RSA 8's current October 31, 2006 deadline under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act, at least in some cases.[41] We therefore conclude that some relief from the deadline is warranted pursuant to the ENHANCE 911 Act.[42] Accordingly, we grant a six-month extension from the date of release of this order subject to certain conditions and reporting requirements so that the Commission can continue to monitor Washington RSA 8's progress in meeting the 95% handset penetration benchmark.[43] Although we grant a limited extension to Washington RSA 8, we emphasize that absent Washington RSA 8 undertaking all necessary efforts to ensure timely compliance, Washington RSA 8 should not assume that the Commission would act favorably on any future request for relief based on the same grounds.

15. We decline to grant the full relief requested because Washington RSA 8 has not established a "clear path to full compliance" with the 95% handset penetration requirement. While we appreciate the efforts Washington RSA 8 has undertaken to date, Washington RSA 8's Request does not demonstrate with sufficient specificity that those efforts will achieve a 95% penetration rate by its requested deadline. Furthermore, the efforts to encourage its customers to upgrade to location-capable handsets that Washington RSA 8 has described in its quarterly updates have remained substantially the same over the past year,[44] and Washington RSA 8 has not indicated that it plans to adopt a more aggressive approach in the future. Under these circumstances, we find that Washington RSA 8 has not justified the full relief it requested.

16. *Conditions.* As a condition of the relief granted herein, Washington RSA 8 has an ongoing obligation, until it achieves a 95% handset penetration rate, among its subscribers, of location-capable handsets, to (1) notify its customers, such as by billing inserts, of the status of PSAP requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit their location information, and (2) actively work with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

17. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief granted herein, we will continue to require Washington RSA 8 to file status reports every February 1, May 1, August 1, and November 1, but extend these reporting requirements until August 8, 2008.[45] These reports shall include the following information, as previously required: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the

[41] Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

[42] Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Washington RSA 8's Request satisfies the Commission's E911 waiver criteria.

[43] We note that the Commission has not received any objections from the public safety community specific to the instant request.

[44] *See* Washington RSA 8 May 1, 2006 Quarterly Report at 2-4; Washington RSA 8 August 1, 2006 Quarterly Report at 2-4; Washington RSA 8 November 1, 2006 Quarterly Report at 2-4; Washington RSA 8 February 1, 2007 Quarterly Report at 2-4.

[45] *See Washington RSA 8 Waiver Order*, 21 FCC Rcd at 2839 ¶¶ 15-16. We note that we are requiring Washington RSA 8 to file status reports beyond the date on which we otherwise require it to achieve 95% penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring Washington RSA 8's progress for an additional year following its revised deadline.

status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until it satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. To comply with the sixth reporting requirement – status in achieving compliance – Washington RSA 8 must include a detailed, specific explanation of how it arrived at its estimate of whether it is on track to meet the compliance deadline, including an explanation of any assumptions it has made. It must also include a discussion of how its compliance efforts compare with the efforts of other Tier III carriers – particularly efforts the Commission has cited in previous orders[46] – and an explanation of why Washington RSA 8 has chosen the compliance efforts it has chosen.[47] We emphasize that irrespective of the relief we grant in this *Order*, we fully expect Washington RSA 8 to achieve compliance as quickly as possible.

IV. CONCLUSION

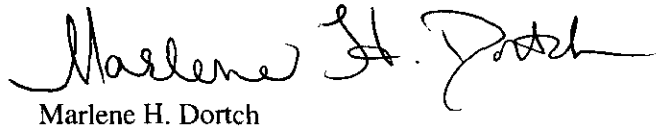
18. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that Washington RSA 8 is entitled to a limited extension of the deadline by which it was required to achieve 95% penetration among its subscribers of location-capable handsets. Accordingly, we grant Washington RSA 8's request for further waiver in part and extend the date by which Washington RSA 8 must achieve 95% penetration to August 8, 2007. We further impose the conditions and reporting requirements described herein to ensure that Washington RSA 8 achieves full compliance with the Commission's E911 requirements.

V. ORDERING CLAUSES

19. IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

20. IT IS FURTHER ORDERED that the Request for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules by Washington RSA No. 8 Limited Partnership IS GRANTED IN PART, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be August 8, 2007.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

[46] *See, e.g.*, Request for Waiver of Location-Capable Handset Penetration Deadline by Sprint Nextel Corporation, WT Docket No. 05-286, *Order*, FCC 06-183, ¶ 32 (rel. Jan. 5, 2007) (describing compliance efforts undertaken by Tier III carriers).

[47] For example, to the extent that Washington RSA 8 offers free location-capable handsets as an inducement to its subscribers to upgrade non-location-capable handsets, it should explain whether these free handsets were offered without requiring a renewed or extended service contract.